



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**JUL 5 2005**

Brian G. Svoboda, Esq.  
Perkins Coie  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005

RE: MUR 5492  
Freedom, Inc. and William  
Carson, in his official capacity as  
treasurer

Dear Mr. Svoboda:

On August 3 and October 18, 2004, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, information provided by your clients, and publicly-available information, the Commission, on June 21, 2005, found that there is reason to believe Freedom, Inc. and William Carson, in his official capacity as treasurer, violated 2 U.S.C. §§ 433, 434, 441b(a) and 441d(a), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath.

In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred

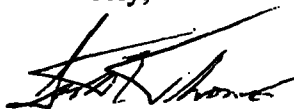
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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Kathleen Guith, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas  
Chairman

Enclosures

Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**  
**999 E Street, N.W.**  
**Washington, D.C. 20463**

**FACTUAL AND LEGAL ANALYSIS**

**Respondent:**

**Freedom, Inc. and William Carson, in his  
official capacity as treasurer**

**MUR: 5492**

**I. INTRODUCTION**

This matter concerns allegations that Freedom, Inc., an incorporated Missouri non-profit political organization not registered with the Commission, made corporate contributions to Emanuel Cleaver, a candidate for the Democratic Party's 2004 nomination for United States Representative in Missouri's 5th Congressional District. Specifically, Freedom, Inc. is alleged to have coordinated with Cleaver's campaign on at least \$7,000 of expenditures for radio and print advertisements expressly advocating Cleaver's election. Complainant also alleges that Freedom, Inc. violated 2 U.S.C. § 441b(b)(2) because the advertisements constituted electioneering communications that were paid for with "soft money" within 30 days of a primary election and that it should have registered with the Commission as a political committee. After evaluating all of the available information, the Commission finds reason to believe that Freedom, Inc. and William Carson, in his official capacity as treasurer, violated the Federal Election Campaign Act of 1971, as amended ("the Act").

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Background**

Freedom, Inc. is a local non-profit political organization incorporated under the laws of Missouri. Freedom, Inc.'s self-described principal mission is "to maximize the political strength of local African-American leaders within the State of Missouri through concerted efforts of

1 grassroots volunteers.” Freedom, Inc. Resp. at 1. Freedom, Inc. is registered with the Missouri  
2 Ethics Commission and files regular reports disclosing its receipts and disbursements pursuant to  
3 state law.<sup>1</sup> William Carson is Freedom, Inc.’s designated treasurer. According to its Missouri  
4 State Disclosure Reports, in 2004 Freedom, Inc. had receipts totaling approximately \$98,000,  
5 and disbursements totaling approximately \$173,887.

6 Freedom, Inc. states that it has traditionally concentrated its efforts on endorsing  
7 candidates for state and local office. *Id.* However, in the 2004 election cycle, Freedom, Inc.  
8 endorsed Emanuel Cleaver II, a candidate for the Democratic Party’s nomination for the United  
9 States House of Representatives in the 5<sup>th</sup> Congressional District of Missouri. *See also infra* note  
10 3. Cleaver, a former mayor and city councilman of Kansas City, announced his candidacy on  
11 February 6, 2004 for the August 3, 2004 primary election. Cleaver filed his Statement of  
12 Candidacy with the Commission, and designated Cleaver for Congress (“Cleaver Committee”) as  
13 his principal campaign committee, with David Fenley as its treasurer.

14 Freedom, Inc. has historically close ties with Cleaver. Cleaver has been a longstanding  
15 member of the organization and the organization endorsed Representative Cleaver in his  
16 previous local mayoral and city council campaigns. Freedom, Inc. Resp. at 2. In addition, in its  
17 2003 Annual Registration Report, filed with the Missouri Secretary of State March 1, 2004,  
18 Freedom, Inc. listed Cleaver among its 81 member Board of Directors. Attach. 1 at 2. Cleaver,  
19 while acknowledging that Freedom Inc.’s records indicate that he was a board member of the  
20 organization at least through 2003, claims that those records are incorrect and that he last

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<sup>1</sup> Missouri requires that all political committees register and report with the “appropriate filing officer.” MO. REV. STAT. §§ 130.011(1) and 130.26(2) (2004). Missouri statute defines a committee as “a person or any combination of persons, who accepts contributions or makes expenditures for the primary or incidental purpose of influencing or attempting to influence the action of voters” if the aggregate of expenditures made or the aggregate of contributions received during a calendar year exceeds five hundred dollars or if a single contributor has contributed more than two hundred and fifty dollars of such aggregate contributions. MO. REV. STAT. § 130.011(7) (2004).

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1 attended a board meeting in 2002, last paid membership dues in 2003, and disassociated himself  
2 completely with Freedom, Inc. at some point prior to entering the Congressional race.<sup>2</sup> Cleaver  
3 Resp. at 2.

4 Freedom, Inc. publicizes its endorsements by creating and distributing communications  
5 promoting its slate of candidates and pays for these communications by collecting donations  
6 from endorsed candidates and from other sources eligible for use under state law. *Id.* During the  
7 2004 election cycle, as with previous election cycles, Freedom, Inc. used funds raised from  
8 endorsed candidates and other sources to pay for communications it created and disseminated in  
9 support of the candidates it chose to endorse, including \$10,000 donated by the Cleaver  
10 Committee on June 23, 2004. Freedom, Inc. Resp. at 2. At least two of the advertisements that  
11 Freedom, Inc. created and distributed featured endorsements of Cleaver. Available information  
12 suggests that Freedom, Inc. spent more than \$7,000 on these advertisements. *See infra* § II.B.1.

13 The first advertisement, a radio advertisement, featuring an endorsement of Cleaver by  
14 Missouri State Representative Sharon Sanders Brooks, appears to have aired on a single radio  
15 station from July 3, 2004 through August 2, 2004. The complaint attaches a transcript of the  
16 advertisement that reads as follows,

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<sup>2</sup> Freedom, Inc. also asserts that Representative Cleaver is no longer a member of the organization or its Board of Directors, nor was he at the time that the communications at issue in this matter were developed and distributed. Freedom, Inc. Resp. at 2. Freedom, Inc.'s most recent Annual Registration Report, filed on October 13, 2004, provides the names of only four members of its Board of Directors (in contrast to its previous filing which listed 81 members), and Representative Cleaver is not among the four individuals listed. Attach. 2.

1 Hello, this is Sharon Sanders Brooks, Missouri State Representative.

2 Night Hoops, Hot Summer Nights, the American Jazz Museum, the Negro  
3 Leagues Baseball Museum, Brush Creek Development, 6 new community  
4 centers, the Brush Creek Center, the Hill Crest Center, and the Klice  
5 Climbers Center are just a few of the accomplishments of one Mayor  
6 Emanuel Cleaver.

7  
8 Reverend Cleaver needs our help on August 3<sup>rd</sup>. These accomplishments  
9 stand out as one who has a proven track record of leadership. The  
10 African-American community is being challenged by those who say it will  
11 not vote. Reverend Cleaver deserves to go to Congress, but he can not  
12 [sic] do it without you. Tell a friend that August 3<sup>rd</sup> is important to this  
13 community. We can do it, I know we can.

14  
15 His opponent just moved back into the community. Mayor Cleaver has  
16 long been a part and active in this community. I'm Sharon Sanders  
17 Brooks and I ask that you vote for both of us on August the 3<sup>rd</sup> and the  
18 entire Freedom Incorporated ticket.

19  
20 Paid for by Freedom Incorporated, William Carson, Treasurer.

21  
22 The second advertisement created and distributed by Freedom, Inc. that featured  
23 its endorsement of Cleaver was a newspaper advertisement that appears to have been run  
24 as a full-page ad in two separate Kansas City newspapers on or about July 16, 2004. The  
25 advertisement has a banner across the top that states, "Vote the entire Freedom ballot  
26 Tuesday August 3<sup>rd</sup>." The remainder of the ad is separated into three columns. The first  
27 column contains a letter from Mark Bryant, President of Freedom, Inc. Bryant writes,

28 All too often we wait until the November general election, to cast our  
29 vote. In Jackson County, the real election is the AUGUST PRIMARY.  
30 Jackson County is the stronghold of the Democratic Party. Whoever wins  
31 the August Democratic primary election will generally win the November  
32 general election. Please understand what I am saying—if just 35,000  
33 African Americans vote, Emanuel Cleaver wins! If not, those who assume  
34 we are complacent voters, will win hands down!

35  
36 On Tuesday, August 3<sup>rd</sup>, you get to decide who you want to represent your  
37 interest in many important offices and especially the United States House  
38 of Representatives.

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1  
2 The contrast between the two candidates is stark. Emanuel Cleaver served  
3 three, four-year terms on the City Council. He served two, four-year  
4 terms as Mayor. Cleaver's opponent is a "carpetbagger." Simply stated,  
5 he has not lived in this community for twenty-five years.

6  
7 Make no mistake about it. There are people in the Fifth Congressional  
8 District who are willing to overlook the shortcomings of Cleaver's  
9 opponent, simply because Emanuel Cleaver is African-American.

10  
11 On August 3<sup>rd</sup>, make it a family affair. Get every registered voter in your  
12 entire family out of the house and GO VOTE!

13  
14 Support the bridge that brought us across.

15  
16 At the top of the second column of the advertisement there are pictures of two candidates, including  
17 Representative Cleaver. Below the pictures is a slate of candidates endorsed by Freedom, Inc.  
18 Finally, the third column has the signatures of several of the candidates and/or state officeholders.  
19 Representative Cleaver is not among those whose signature appears.

20 On July 27, 2004, Complainant filed this complaint alleging, among other things, that  
21 Freedom, Inc. made corporate expenditures for the advertisements and should have registered  
22 with the Commission as a political committee. Respondents Freedom, Inc. and Cleaver for  
23 Congress each filed separate responses to the complaint. In its response to the complaint,  
24 Freedom, Inc. acknowledged paying for the advertisements but states, "[t]o the extent any  
25 violation of Commission regulations can be fairly alleged to have occurred here, it would have  
26 been as a consequence of Freedom, Inc.'s focus on Missouri state and local elections, and its  
27 concomitant unfamiliarity with the specific requirements of Federal law." Freedom, Inc. Resp.  
28 at 3.

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**B. Legal Analysis**

The Commission finds reason to believe that Respondents violated the Act in connection with three issues: (1) whether Freedom, Inc. made expenditures within the meaning of the Act that may have triggered registration and reporting requirements; (2) whether Freedom, Inc. made prohibited corporate expenditures; and (3) whether the disclaimers included in the advertisements were required to indicate whether they were authorized by a particular candidate. Based on the facts before us, the Act, and its corresponding regulations, it appears that the disbursements for the communications at issue were expenditures that may have triggered the registering and reporting requirements for Freedom, Inc., or, in the alternative, may have constituted prohibited corporate expenditures by Freedom, Inc. Furthermore, it appears that the advertisements may have lacked disclaimers required by the Act.

*1. Political Committee Status*

Freedom, Inc. is not registered with the Commission. Complainant alleges that Freedom, Inc. should be registered with the Commission because the amount of the expenditures it made caused it to become a political committee within the meaning of the Act, and thereby subject to the registering and reporting requirements of the Act. *See* 2 U.S.C. §§ 431(4)(A) and 434. The Act defines a “political committee” as any committee, club, association, or other group of persons that receives contributions or makes expenditures aggregating in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A). Therefore, if the disbursements made by Freedom, Inc. to fund the advertisements at issue were expenditures that exceeded \$1,000, then Freedom, Inc.



1 may have triggered political committee status.<sup>3</sup> *Id.* As discussed below, the available  
2 information appears to show that Freedom, Inc. made expenditures in excess of \$1,000 in  
3 connection with the 2004 primary race for Missouri's 5<sup>th</sup> Congressional district by producing two  
4 advertisements that expressly advocated the election of Emanuel Cleaver for the 5<sup>th</sup> District  
5 Congressional race.

6 The Act defines an expenditure as "any purchase, payment, distribution, loan, advance,  
7 deposit, or gift of money or anything of value made by any person for the purpose of influencing  
8 any election for Federal office." 2 U.S.C. § 431(9)(A)(i). In the radio advertisement, after  
9 focusing on Cleaver's various accomplishments, the state representative serving as the narrator  
10 urges listeners to vote for Cleaver by stating, "Reverend Cleaver needs our help on August 3<sup>rd</sup>  
11 ... Reverend Cleaver deserves to go to Congress, but he can not do it without you ... I ask that  
12 you vote for both of us on August the 3<sup>rd</sup>." In the newspaper advertisement, Freedom, Inc.  
13 President Mark Bryant similarly extols Reverend Cleaver as a candidate and urges the reader to  
14 vote for Cleaver. Bryant writes, "Please understand very clearly what I am saying—if just  
15 35,000 African Americans vote, Emanuel Cleaver wins! If not, those who assume we are  
16 complacent voters, will win hands down! On Tuesday, August 3<sup>rd</sup>, you get to decide who you

<sup>3</sup> To address overbreadth concerns, the Supreme Court has held that only organizations whose major purpose is campaign activity, such as the nomination or election of a candidate, can be political committees. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 79 (1976) ("*Buckley*"); *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986) ("*MCFL*"). *But see Akins v. FEC*, 101 F.3d 731, 740-42 (D.C. Cir. 1996), *vacated on other grounds*, 524 U.S. 11 (1998) ("major purpose" test applies only to independent expenditures, not direct contributions). Freedom, Inc. states that "its principal mission is to maximize the political strength of local African-American leaders within the State of Missouri." Freedom, Inc. Resp. at 1. In a sworn affidavit, Cleaver states that, "Freedom, Inc. has traditionally endorsed minority candidates for local office and often takes positions on candidates for state and national office." Cleaver Resp. at Attach. 1 (emphasis added). Furthermore, Freedom, Inc. President Mark Bryant commented in one newspaper article as follows, "I think Rev. Cleaver can generate a higher turnout of African American voters who historically support the *Democratic ticket*. And a high African-American turnout will benefit the Democratic *presidential nominee*, the Democratic gubernatorial nominee and the Democratic candidates for statewide office." Lawrence-Journal World Jan. 11, 2004 <http://ljworld.com/section/nationalpolitics/story/157730> (emphasis added).

1 want to represent your interest in many important offices and especially the United States House  
2 of Representatives.” Bryant later concludes his letter with the following plea to readers, “On  
3 August 3<sup>rd</sup>, make it a family affair. Get every registered voter in your entire family out of the  
4 house and GO VOTE!” Each of these messages is designed to influence the respective listeners  
5 and readers to vote for Cleaver in the Democratic primary for the 5<sup>th</sup> Congressional District of  
6 Missouri. As a result, it appears that the disbursements made by Freedom, Inc. to fund the two  
7 advertisements were expenditures within the meaning of the Act.

8 Furthermore, the available information appears to show that Freedom, Inc. spent in  
9 excess of \$1,000 on the advertisements at issue. According to Complainant, the radio  
10 advertisement at issue was reportedly broadcast on KPRS/Hot 103 Jamz FM, a Kansas City radio  
11 station owned by the Carter Broadcasting Group. *See* Compl. Ex. A. Freedom, Inc.’s state  
12 disclosure reports show that Freedom, Inc. made two disbursements to Carter Broadcasting on  
13 June 28, 2004, in the amounts of \$3,500 and \$1,500. Complainant provides copies of two  
14 estimates prepared for Freedom, Inc. by Carter Broadcasting on June 29, 2004. Compl. Ex. D.  
15 The first estimate lists the “Estimate #” as “Cleaver,” the “Product” as “Vote on 8-3,” and  
16 contains a quote of \$3,500 for airtime on radio station KPRS from July 3, 2004 through August  
17 2, 2004 (the day before the Democratic primary). *Id.* at 1-2. The second estimate also specifies  
18 the “Estimate #” as “Cleaver,” the “Product” as “Vote on 8-3,” and contains a quote of \$1,500  
19 for airtime on another station owned by Carter Broadcasting Group, KPRT, from July 3, 2004  
20 through August 2, 2004. *Id.* at 3. Although the date of the committee’s disbursement precedes  
21 the date of the estimate by one day, it is reasonable to infer that these airtime costs were incurred  
22 in connection with the advertisement featuring Freedom, Inc.’s endorsement of Cleaver. Not  
23 only do the amounts of the committee’s disbursements match the estimate amounts, but the

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1 description of the advertisement for which the estimates were given ("Vote on 8-3") also  
2 matches the content of the transcript of the advertisement provided by Complainant. Therefore,  
3 it appears that Freedom, Inc. spent at least \$5,000 on the radio advertisement at issue.<sup>4</sup> See  
4 Compl. Ex. A.

5 The newspaper advertisement at issue appeared in the *Kansas City Call* and the *Kansas*  
6 *City Globe* on July 16, 2004. Compl. Ex. B. Freedom, Inc.'s state disclosure reports also show  
7 that Freedom, Inc. made two disbursements in the amount \$1,261 each to the *Kansas City Call*  
8 on June 22 and 30, 2004, and two disbursements in the amount of \$995 each to the *Kansas City*  
9 *Globe* on June 22 and 29, 2004. Compl. Ex. C at 5. It is reasonable to infer that the  
10 disbursements on at least one of those occasions to the newspapers in which the Cleaver  
11 newspaper advertisement first appeared on July 16, 2004 were disbursed in order to pay for the  
12 Cleaver advertisement. Therefore, it appears that Freedom, Inc. spent at least \$2,256 on the  
13 newspaper advertisement at issue.

14 Freedom, Inc. disbursed a total of at least \$7,256 in connection with the advertisements at  
15 issue. Because Freedom, Inc. appears to have made more than \$1,000 in expenditures, it appears  
16 that it was subject to the registering and reporting requirements of the Act. Therefore, the  
17 Commission finds reason to believe that Freedom, Inc. and William Carson, in his official  
18 capacity as treasurer, violated 2 U.S.C. §§ 433 and 434 by failing to register as a political  
19 committee and file disclosure reports. In addition, on June 23, 2004, Freedom, Inc. accepted two  
20 corporate contributions in the amounts of \$15,000 and \$10,000 from American Tri-Star, Inc. and  
21 Pyramid Construction, respectively. See *infra* note 6. Therefore, the Commission finds reason

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<sup>4</sup> On June 28, 2004, Freedom, Inc. also made a \$5,000 disbursement for "Air Time" to KMJR/107.3. Compl. Ex. C at 6. While we do not have any supporting documentation regarding this disbursement, because it was made on the same day that disbursements were made to Carter Broadcasting to air the Cleaver advertisement, it is possible that this \$5,000 disbursement may have also been made in connection with the Cleaver advertisement.

1 to believe that Freedom, Inc. and William Carson, in his official capacity as treasurer, violated  
2 2 U.S.C. § 441b by accepting corporate contributions.

3                   2.       *Corporate Expenditures*

4           In the alternative, it appears that Freedom, Inc. made prohibited corporate expenditures  
5 by financing and distributing communications that expressly advocated the election of a federal  
6 candidate. *See* 2 U.S.C. § 441b(a). Pursuant to 2 U.S.C. § 441b, corporations are prohibited  
7 from making expenditures in connection with federal elections. Freedom, Inc. is registered with  
8 the Missouri Secretary of State as a non-profit corporation.<sup>5</sup> Although certain non-profit  
9 corporations may permissibly make independent expenditures pursuant to 11 C.F.R. § 114.10,  
10 Freedom, Inc. has not claimed to be, and does not appear to qualify as, the type of non-profit  
11 corporation that falls into the regulatory exception.<sup>6</sup> Accordingly, the Commission, in the  
12 alternative, finds reason to believe that Freedom, Inc. and William Carson, in his official  
13 capacity as treasurer, violated 2 U.S.C. § 441b by making impermissible corporate expenditures  
14 in connection with the Congressional election in the 5<sup>th</sup> Congressional District of Missouri.

15                   3.       *Disclaimers*

16           The Act provides that whenever any person makes an expenditure for the purpose of  
17 financing a communication expressly advocating the election or defeat of a clearly identified

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<sup>5</sup> A representative of the Internal Revenue Service confirmed that it does not have a record of tax exempt status for Freedom, Inc.

<sup>6</sup> Pursuant to 11 C.F.R. § 114.10(d), a qualified non-profit can make independent expenditures without violating the prohibitions against corporate expenditures. However, in order to qualify as such a non-profit, it must not directly or indirectly accept donations of anything of value from business corporations, or labor organizations. 11 C.F.R. § 114.10(c)(4)(ii). According to the disclosure reports filed by Freedom, Inc. with the Missouri Ethics Commission, Freedom, Inc. did in fact accept contributions directly from corporations during the 2004 election cycle. Specifically, on its disclosure report filed July 7, 2004, it discloses that a \$15,000 contribution was received from American Tri-Star, Inc. on June 23, 2004; and a \$10,000 contribution from Pyramid Construction was received on June 23, 2004. Compl. Ex. C at 4. As a result, Freedom, Inc. cannot be among those non-profit corporations that are exempt from the prohibitions on making independent expenditures.

1 candidate or for the purpose of soliciting contributions, such communication must include a  
2 disclaimer clearly stating the name of the person who paid for the communication and indicating  
3 whether the communication was authorized by any candidate or candidate's authorized  
4 committee. 2 U.S.C. § 441d(a); *see also* 11 C.F.R. § 110.11. It appears that Freedom, Inc. failed  
5 to include the disclaimers required by the Act on the advertisements at issue.

6 Freedom, Inc.'s endorsement of Cleaver in the radio and newspaper advertisements  
7 constituted express advocacy of Cleaver's election. As a result, each of the communications  
8 should have contained a disclaimer, pursuant to 2 U.S.C. § 441d(a). Although each  
9 advertisement appeared to have contained a disclaimer stating that it was paid for by Freedom,  
10 Inc., each failed to indicate whether it was authorized by a candidate, its authorized committee,  
11 or its agents. Therefore, the Commission finds reason to believe that Freedom, Inc. and William  
12 Carson, in his official capacity as treasurer, violated 2 U.S.C. § 441d with respect to these two  
13 advertisements.

Attachments:

- (1) Freedom, Inc. 2003 Annual Registration Report, filed with the Missouri Secretary of State on March 1, 2004.
- (2) Freedom, Inc. 2004 Annual Registration Report, filed with the Missouri Secretary of State on October 13, 2004.

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